

In interview from NYC...


REGION II ADMINISTRATOR DETAILS OSHA EFFORTS IN NYC RUBBLE AFTER TERRORIST ATTACKS

In an interview with *Inside OSHA*, Patricia Clark, OSHA's regional administrator for region II, laid out the agency's efforts to protect rescue workers in New York City around the clock in the aftermath of the terrorist attacks on the city.

Clark said dozens of OSHA staff are working 24 hours a day to keep rescue personnel safe. The pile of rubble that was the World Trade Center is host to numerous health and safety hazards, ranging from exposure to airborne hazards such as asbestos, silica and lead to people falling or being

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OMB places emphasis on science, cost-benefit analyses **GRAHAM WANTS VIGOROUS ENFORCEMENT OF CLINTON ORDER ON REGULATORY PLANNING**



The Office of Management and Budget (OMB) is calling on federal agencies to closely follow Executive Order (E.O.) 12866, issued by the Clinton administration, on regulatory planning. Furthermore, OMB wants to place a larger emphasis on peer review and risk assessment within a "science-based regulatory review framework," that has some OSHA stakeholders wondering how these principles will apply to the agency.

In a Sept. 20 memo, John Graham, Director of OMB's Office of Information and Regulatory Affairs (OIRA), said White House Chief of Staff Andrew

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Card instructed him "to work with the agencies to implement vigorously the principles and procedures of E.O. 12866 until a modified or new Executive Order is issued."

The document places a great emphasis on "regulatory impact analyses," the cost-benefit assessments agencies must prepare for significant rules, namely those that cost \$100 million a year. Going beyond the scope of E.O. 12866, Graham also advises agencies to conduct "risk assessments," which he says should be "objective, realistic, and scientifically balanced" analyses. Furthermore, the OIRA director calls for peer reviews for technical documents supporting the regulations as well as for regulatory impact analyses.

However, OSHA stakeholders point out that many aspects of Graham's memo should not apply to OSHA. The *Cotton Dust* Supreme Court decision precludes OSHA from doing cost-benefit analyses for health standards, these sources argue.

An agency source at press time pointed out that OSHA does regulatory impact analyses with cost-benefit assessments, but added these are not supposed to factor in to the decisions of whether a standard should be promulgated. In addition, the source noted that the agency "has been instructed to do peer reviews on some standards."

Industry groups have long pressed the agency on peer reviews and OMB's memo could be an indication that

OSHA may look at this issue more closely.

An Aug. 25, 1981 Department of Labor (DOL) memorandum that summarizes the impact of OSHA-related Supreme Court cases, noted that the court "held that cost-benefit was not required under the OSH Act. Its various statements that cost-benefit was 'inconsistent' with the language, legislative history and underlying policies of the Act virtually precludes any utilization by OSHA of cost-benefit analysis to determine a level of protection which is less stringent than that which would be mandated by the 'significant risk' — 'feasibility' tests."

With regard to cost-effectiveness, the 1981 DOL memorandum points to the *Cotton Dust* decision, saying it "would permit, even require, OSHA to engage in so-called cost-effectiveness analysis; that is, the Agency must choose the least costly alternative which will achieve the required level of protection."

An organized labor official lamented that the Graham memorandum attempts to achieve through the executive branch what failed in Congress, implying the outline is similar to and includes many components of a regulatory reform bill introduced by Sens. Fred Thompson (R-TN) and Carl Levin (D-MI).

The text of the Graham memorandum on the administration's regulatory review framework is available on *IWP Extra*. Please see the box on page 2 for details.

from a needlestick injury, cited by 45 percent, the association said.

More than two-thirds of nurses said they work some type of mandatory or unplanned overtime every month, the ANA said.

"Patients will not get the type of care they deserve when nurses are stressed, overworked and concerned for their own health and safety," ANA President Mary Foley said.

Of the more than 4,800 nurses who responded to the ANA's online survey in July and August, 88 percent said that workplace health and safety concerns were a factor in deciding whether to continue working in the profession, the association said.

Other concerns of respondents included;

- the possibility of being infected with tuberculosis or another disease, listed by 37 percent of nurses;
- the risk of being assaulted on the job, noted by 25 percent;
- the potential for developing a latex allergy, indicated by 21 percent; and
- the risk of having a fatigue-related car accident after a shift, a risk listed by 18.8 percent of nurses.

The nurses responding to the survey represented varied age groups, experience levels, and types of care facilities, the ANA said. However, the highest percentage of nurse respondents were between 41 and 50 years old and had more than 10 years experience on the job.

The demographics are consistent with a federal survey of registered nurses in 2000 that found the average age of registered nurses was 45.2 years, the ANA said.

Reports of Assaults, Needlestick Risk. Fewer than 20 percent of nurses responding felt safe in their current work environment, according to the survey. Seventeen percent of nurses responding had been physically assaulted in the past year and more than half were threatened or had experienced verbal abuse.

While the implementation of the Occupational Safety and Health Administration's needlestick rule has made a significant impact, the ANA survey found that almost 20 percent of nurse respondents said that their facilities still do not provide safe needle devices for injections, IV insertions, and blood-drawing procedures.

An even greater percentage, 39 percent, indicated that their facilities continue to use powdered latex gloves, a hazard known to cause severe allergic reactions in some patients and workers.

Risk Assessment

Procedures for Assessing Risk by OSHA, Other Agencies, Described in GAO Report

Chemical risk assessment procedures for three federal agencies are largely similar, although methods and assumptions the agencies use can result in significantly different conclusions even for the same chemical, according to a General Accounting Office report released Sept. 5.

The report, *Chemical Risk Assessment Selected Federal Agencies' Procedures Assumptions and Policies*, reviewed the ways the Occupational Safety and Health Administration, the Environmental Protection Agency, the Food and Drug Administration, and the Department

of Transportation's Research and Special Program Administration conduct risk assessments.

GAO also analyzed whether the agencies have guidance and whether legislation authorizing agency activities specifies the methods, calculations, or assumptions the agencies are supposed to use.

OSHA, EPA, and FDA, generally follow the four-step risk assessment process recommended by the National Academy of Sciences, GAO said. NAS has recommended risk assessors identify the hazard a chemical poses, the dose at which it causes harm, and the extent of exposure before summarizing the information in a risk characterization.

OSHA's Distinct Approach. The GAO said that much of what is distinct about OSHA's risk assessment "can be traced to statutory provisions, court decisions, and the nature of workplace exposures to chemicals."

The Occupational Safety and Health Act of 1970 requires the agency to set standards that feasibly assure that a worker is protected "even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life."

GAO said that the U.S. Supreme Court's "Benzene" decision in 1980 has been a significant factor influencing the interpretation of the OSH act. Courts have interpreted the decision to require the agency to quantify the risk for each substance it seeks to regulate "unless it can demonstrate that a group of substances share common properties and pose similar risks." Thus, the agency cannot issue a standard without explaining how it concluded that the standard will substantially reduce a significant risk.

How workers are exposed to chemicals at work also affects OSHA risk assessments, GAO said. Workers generally are exposed at higher levels than the general public, often "at levels not much lower than those used in experimental animal studies," the report said. Consequently, the agency often has current exposure data "in contrast to most other agencies regulating toxic substances."

The GAO said that some of the differences in how agencies assess chemical risk result from the different situations and exposures the agencies regulate, GAO said. For example, OSHA has found that methylene chloride poses a greater human health risk than has EPA. However, EPA reviewed the chemical as a contaminant at superfund sites and the chemical, while OSHA examined the risk for a worker that could be breathing it in eight hours a day.

Curtis Copeland, one of the GAO analysts who wrote the report, said his office did not reach any conclusions about federal agencies' risk assessments. He described the report as a purely descriptive analysis of the procedures, assumptions, and policies used by four specific agencies.

Possible House Committee Hearings. House Commerce Committee Chairman Billy Tauzin (R-La.) and Rep. Paul Gillmor (R-Ohio) requested the report over concern that federal agencies overestimate the risks of chemicals because they fail to use the best available science and ignore sound, objective scientific procedures, a spokesman for Tauzin told BNA.

The spokesman said GAO's report confirms there are many problems with the procedures and assumptions agencies use to assess chemical risks.

The Commerce Committee is likely to hold a hearing about use of risk assessment by federal agencies, the spokesman said. The committee will discuss what other actions it could take, such as introducing risk-related legislation, after it reviews the report and comments at a hearing, he said.

A copy of GAO's report can be downloaded from <http://www.gao.gov/cgi-bin/getrpt?gao-01-810> on the World Wide Web.

Health Hazards

NIOSH Suggests Work Modifications To Reduce Bag Stackers' Dust Exposures

Exhaust ventilation systems used in conjunction with an overhead air supply can reduce dust exposure for workers who stack bags of minerals with semi-automated "palletizing" machines, according to the National Institute for Occupational Safety and Health.

A NIOSH Hazard Control bulletin released in August says that bag stackers at mineral processing plants are exposed to excess dust from material that is finely ground and placed into bags for shipping to consumers. High exposures come mainly from the force from loading the bags—normally ranging from 50 to 100 pounds—onto the pallet, according to NIOSH Hazard Control 31, *Dust Protection for Bag Stackers*.

Information from the Mine Safety and Health Administration "indicate the bag stacker's dust exposure is one of the highest of all workers at mineral processing operations," NIOSH said.

The institute noted that methods of reducing the dust exposure and strain to the worker "are in constant development" and range from fully automated to semi-automated systems.

In a semi-automated system, a worker slides bags into position on the machine. Once an entire layer of bags is in position, the worker operates the machine to lower the layer of bags onto a pallet. An air slide, which consists of a metal table with jets that force air through small holes at high velocities, is built into the machine so the bags are easier to move. "The dust problem occurs because the air slide causes dust to blow up onto the bag stacker, significantly increasing the dust exposure," NIOSH wrote.

The document warned that all operators using this type of semi-automated palletizing system need to be aware of the serious dust contamination that can occur.

To control high dust exposures, the institute recommended that employers institute the following modifications:

- Use an exhaust ventilation system with an effective hood design to capture the dust.
- Use an overhead air supply island system to provide "an envelope of clean air" over the bag stacker.
- Place plastic stripping around the overhead air supply island system to provide a boundary of clean air from the system.
- Modify the bag stacker's work practices to keep the worker within the envelope of clean air.

The NIOSH Hazard Control, Dust Protection for Bag Stackers, can be viewed on the institute's web site

at <http://www.cdc.gov/niosh/hc31.html>. It also will be included in a future release of BNA's Safety Library on CD.

Paperwork Reduction Act

Comments Sought on Proposed Extension Of OSHA's Injury, Illness Data Initiative

The Occupational Safety and Health Administration proposed an extension of paperwork requirements for its data initiative to collect occupational injury and illness data from up to 139,000 employers, the agency announced Sept. 11 (66 FR 47426).

The Federal Register notice said that OSHA will be collecting information on the number of workers employed and the number of hours worked from establishments in parts of the private sector and from some state and local government agencies.

OSHA's data initiative (OMB No. 1218-0209) for calendar year 2001 will collect information from up to 139,000 employers that are already required to create and maintain records, the agency said.

The data will allow OSHA to calculate occupational injury and illness rates and to focus its efforts on individual workplaces with ongoing serious safety and health problems, the agency said. "Successful implementation of the data collection initiative is critical to OSHA's outreach and enforcement efforts and the data requirements tied to the Government Performance and Results Act," OSHA said.

OSHA estimated that the information collection will take an estimated 66,720 hours. No cost was associated with the task.

Comments on the proposed extension are due by Nov. 13. They should be sent to the Docket Office, Docket No. ICR 1218-0209/2001, Labor Department, OSHA, Room N-2625, 200 Constitution Ave. N.W., Washington, D.C., 20210; (202) 693-2350.

For more information, contact Dave Schmidt, Directorate of Information Technology, Office of Statistics, Room N-3644, at the address above; (202) 693-1886. A copy of each individual information collection request may be obtained by calling Schmidt or Todd Owen at (202) 693-2444.

Chemicals

Lindane Review Shows Risks of Concern For Workers, Wildlife; Cancer Study Pending

A preliminary assessment of the organochlorine insecticide lindane shows some worker and ecological risks of concern, the Environmental Protection Agency said Aug. 29 (66 FR 45677).

According to the agency, risks of concern occur when workers mix or load lindane or apply it to seeds. As for the ecology, lindane poses risks to birds or mammals that eat seeds treated with the pesticide. The insecticide poses no risks of concern from exposures through diet or drinking water, EPA said.

Lindane is used to treat seeds and soil to prevent damage from a broad spectrum of insects.